



STATE OF NEW JERSEY

*Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us*

IN THE MATTER OF THE APPLICATION OF)	<u>TELECOMMUNICATIONS</u>
VERIZON NEW JERSEY, INC. FOR THE)	
APPROVAL OF THE SALE AND CONVEYANCE)	
OF REAL PROPERTY LOCATED IN THE)	ORDER OF APPROVAL
TOWNSHIP OF MAPLEWOOD, ESSEX)	
COUNTY, NEW JERSEY TO 228 BURNET, LLC.)	DOCKET NO. TM04091019
)	

(SERVICE LIST ATTACHED)

BY THE BOARD:

On September 8, 2004, Verizon New Jersey Inc. ("Petitioner" or "VNJ") filed an application for approval of the sale and conveyance of real property located in the Township of Maplewood, Essex County, New Jersey to 228 Burnet, LLC ("Buyer"). According to the petition, VNJ is the owner of certain property consisting of a two story 65,440 square foot building on approximately 3.579 acres of land located in the Township of Maplewood, Essex County, New Jersey ("Property"). The Property is known and designated as Lot 1 and 1.01, in Block 48-47 on the Township of Maplewood Tax Map.

The Property was acquired on September 5, 1974 at a purchase price of \$374,000. Improvements to the Property have been made to the existing building since the purchase. Both external and internal improvements have been made from 1987 through 1995 at a total cost to date of \$3,681,204. The Property was acquired as a site for an office building for Petitioner's directory advertising and sales personnel. The Property ceased to be used for such purpose on or about October 2002 when the personnel from this and a Glen Ridge location were transferred to a new West Orange location. On December 31, 2002, VNJ determined that the Property was not required for any present or prospective utility purposes and therefore would be marketed for sale.

On December 23, 2002, Petitioner obtained an appraisal of the Property from Welsh Chester Galiney Matone, Inc., a real estate appraiser, which determined that the market value of the Property as of December 6, 2002 was \$3,400,000. In January 2003, Petitioner engaged the services of Grubb & Ellis to represent it in marketing and selling the Property.

In February 2003, the Petitioner advertised the property for sale in the Star Ledger and solicited bids. One bid was received from Continental Developers in the amount of \$1,875,000, which

was rejected as being significantly less than the appraised fair market value of the Property. In September 2003, Petitioner again advertised the Property in the Star Ledger. Five bids were received and rejected, all being significantly less than the appraised fair market value. In April 2004, Petitioner again advertised the Property in the Star Ledger and received four bids. The Petitioner accepted the bid of 228 Burnet LLC in the amount of \$3,300,000. Petitioner believes that the Buyer's bid is the best price attainable for the Property and represents the true fair market value of the Property.

According to VNJ, Petitioner reserves no rights or interests in the Property except perpetual easements in, on, under, through, upon, over or/and across a portion of the Property, and through the streets adjoining the Property for the construction and use of a controlled environmental vault and other telecommunications equipment. These easements are more specifically described in the agreement submitted with the petition.

According to the Petition, Petitioner believes that the Purchase Price of \$3,300,000 is the best price attainable for the Property based upon the marketing efforts and appraisal described above. The Property is presently carried on Petitioner's books in the amount of \$2,341,431. The Property is not income producing, and its 2004 assessed value is \$4,018,800. There is no relationship between the Petitioner and the Buyer other than that of Transferor and Transferee.

VNJ and the Buyer claim to have complied with all statutory requirements regarding sale of utility Property as contained in N.J.A.C. 14:1-5.6 and N.J.S.A. 48:3-7 except the subsection of N.J.A.C. 14:1-5.6 (b) 5 which requires the disclosure of the time and place for submitting the bids and for which the Petitioner is seeking a waiver. Petitioner acknowledges that the form of the advertisements technically deviated from the provision of the Board rule in that they inadvertently failed to disclose the "time and place" of the openings of bids. According to the Petitioner, the non-confirming advertisements were based upon an erroneous form of advertisement inadvertently used by one of the Petitioner's real estate consultants. Since discovery of this error, according to the Petitioner, the erroneous form has been corrected. Accordingly, Petitioner requested the waiver or relaxation of the rule pursuant to N.J.A.C. 14:1-1.2, which provides that in special cases and for good cause shown, the Board may, unless otherwise specifically stated, relax or permit deviations from these rules.

Petitioner believes that its request of waiver is justified for the following reasons:

- all other requirements of the rules are met by the form of advertisement that resulted in the Buyer's successful bid of \$3,300,000. Specifically, according to the Petitioner, the advertisement sets forth the time and place for delivery of bids which is more than ten days from the date of the second advertisement; and the bids were opened at a place in the State of New Jersey on the date specified for delivery, which date was less the five days following the final date for submitting bids;
- the Property was advertised for sale on three separate occasions. On the first two occasions, all bids were rejected as being significantly less than the appraised fair market value of the Property, which was \$3,400,000. The third and final advertisement produced four bids ranging from \$1,975,000 to the Buyer's high bid of \$3,300,000, which was accepted by Petitioner as being "not inconsistent with" and "within the tolerance" of the appraised value;

- the Petitioner and the Buyer have, in good faith, entered into an arms length contract for the purchase and sale of the Property at a price that substantially represents the fair market value of the Property. Petitioner claims that not permitting the sale to proceed because of a technical deviation would result in a severe hardship and inconvenience to the Petitioner and the Buyer;
- according to the Petitioner, the prejudice and inconvenience to the Petitioner and the Buyer, which would result from full compliance with the rules at this stage of the transaction clearly outweigh requiring full compliance and constitute good cause for waiving or relaxing the rules; and
- no substantive right of any party will be affected by the requested waiver or relaxation of full compliance with the rules.

RATEPAYER ADVOCATE'S COMMENTS

The Ratepayer Advocate (RPA) submits that the Board should deny the request to waive adherence to the advertising rules and ultimately deny the petition with instructions to resolicit bids in full compliance with the Board's rules. The RPA further submits that if the Board determines that approval is warranted, such approval should require sharing of proceeds from the sale with ratepayers.

The RPA states that the history on the bids for this property shows that each subsequent round of bids has yielded higher and higher bids. If, for example, bid packages were issued to past bidders on properties of greater appraised value, it is reasonable to expect that higher bids can be obtained. Accordingly, the potential for a higher bid price is significant, and continuing the bidding process furthers the public interest. In addition, VNJ has provided no satisfactory basis for the waiver requested. Indeed, there must exist a rational and coherent basis for a determination to waive the advertising rules. The RPA, therefore, opposes the request for waiver of the advertising rules under these circumstances.

The RPA submits that ratepayers are entitled to share equitably in the proceeds from the sale of assets by VNJ as fully discussed in its Initial and Reply Comments in the Sharing Investigation. The RPA therefore incorporates those arguments in this matter. The RPA also asks that the Board review the investment in this property in 2002, when \$30,093 was invested the same year the property was determined by VNJ no longer useful to utility operations and put out for bid. Additionally, since the property was vacated, the RPA recommends that the Board investigate whether further depreciation write-downs are warranted.

VNJ REPLY COMMENTS

On December 7, 2004, VNJ responded to the Ratepayer Advocate's comments. VNJ asserts that the Ratepayer Advocate objects to this proposed sale on minor technical grounds and continues to argue that ratepayers be permitted to share in the proceeds of the sale, an issue presently pending before the Board. According to VNJ, the Ratepayer Advocate's objection that the purchase price of \$3,300,000 which is \$100,000 less than the appraised value of \$3,400,000 ignores the fact that VNJ engaged in extensive marketing efforts for the sale of the property, including public advertisement on three separate occasions over an 18 months period. VNJ also cited a letter from the appraisal firm that originally appraised the property, advising

VNJ that \$3,300,000 is the best sale price attainable for the property and that the highest bid is not significantly inconsistent with the original appraisal.

In response to the Ratepayer Advocate's objection to VNJ's requested waiver, VNJ responds that the waiver of the requirement is plainly justified given the fact that no conceivable harm to any party would result and that the additional cost of starting over the selling process would be avoided by the relaxation of the advertising rule (as well as the risk of losing the sale to the Buyer who submitted by far the highest bid).

VNJ also noted that the same objection was made by the Ratepayer Advocate in a previous sale of property and was rejected by the Board, which concluded that the grant of the waiver is justified because the violation of the bidding process was of a technical nature such that it did not impact upon the ultimate bid results. VNJ believes that the same conclusion applies here and the requested waiver should be granted. VNJ, in response to the Ratepayer Advocate's reassertion regarding the sharing of proceeds as set forth in its comment letters to this and prior property sales, stated that it would like to incorporate its comments submitted in the sharing investigation as if more fully set forth herein.

BOARD'S DISCUSSION

The issue of whether the proceeds of sale of the subject Property should be shared with the ratepayers has been resolved in a separate docket, I/M/O the Board's Investigation as to Whether Ratepayers Should Share in the Proceeds Arising from the Sale and Conveyance of Real Property by Verizon New Jersey, Inc. Docket No. TX04080749, where the Board found that sharing is not required. The issue is therefore moot. Additionally, the Board FINDS that the technical violation of the bidding process here was the result of an inadvertent omission in the bid package, did not impact negatively upon the overall outcome and thus did not result in a flawed bid. As such, the Board FINDS good cause to waive the notice of the time and place of the bid opening in this matter. As stated in its pleadings, the non-confirming advertisements were based upon an erroneous form of advertisement inadvertently used by one of the VNJ's real estate consultants. Since discovery of this error, according to VNJ, the erroneous form has been corrected. While the Board has granted a similar waiver in response to other petitions, the Board nevertheless must place VNJ on notice that future waiver requests of this nature will not be looked upon favorably. Thus, and in view of the foregoing, the Board FINDS that the proposed sale of said Property will not affect Petitioner's ability to provide safe, adequate and proper service, is in the public interest and in accordance with law, and accordingly HEREBY APPROVES the sale, subject to the following conditions:

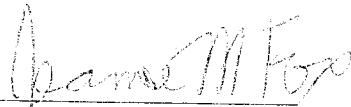
Petitioner is directed to advise the Board of the date on which the transaction is completed, within ten (10) days of completion;

This Order shall be of no effect, null and void, if the sale hereby approved is not completed within six (6) months of the date hereof unless otherwise ordered by the Board; and

The approval of the proposed journal entries recording the sale of this Property shall not affect or in any way limit the exercise of the authority of this Board, or of this State, in any future petition or in any proceeding with respect to rates, financing, accounting, capitalization, depreciation or in any other matters affecting Petitioner.

DATED: 12/23/04

BOARD OF PUBLIC UTILITIES
BY:



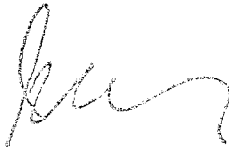
JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



CONNIE O. HUGHES
COMMISSIONER



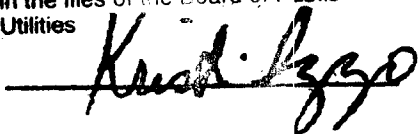
JACK ALTER
COMMISSIONER

ATTEST:



KRISTI L. ZITO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



In the Matter of the Application Verizon New Jersey Inc.
For Approval of the Sale and Conveyance of Real Property Located in the
Township of Maplewood, Essex County, New Jersey to 223 Burnet, L.L.C.

SERVICE LIST

Docket No. TM04091019

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